

**REMARKS**

In view of the above amendments and the following remarks, reconsideration of the rejections contained in the Office Action of October 15, 2008 is respectfully requested.

By this Amendment, claims 4 and 6-15 have been amended, and new claim 16 has been added. Thus, claims 4-16 are currently pending in the application. No new matter has been added by these amendments.

Revisions have been made to the specification and abstract. No new matter has been added by the revisions. Entry of the amendments to the specification and abstract is thus respectfully requested.

On page 2 of the Office Action, the Examiner rejected claim 6 under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the Examiner asserted that it is unclear how the stereoscopic microscope image and the fluorescent image are made to correspond to each other at the same time. In this regard, it is noted that amended claim 6 recites that the stereoscopic microscope image and the fluorescent microscope image are made to correspond to each other at the same time "by comparing a relative positional relationship of the stereoscopic microscope image and the fluorescent microscope image when the channel into which a fluid containing samples is introduced is observed with an optical microscope." Further, it is noted that this limitation of claim 6 is described on pages 5-7 of the original specification, and therefore it is respectfully submitted that one of ordinary skill in the art would understand how the stereoscopic microscope image and the fluorescent image are made to correspond to each other at the same time "by comparing a relative positional relationship of the stereoscopic microscope image and the fluorescent microscope image when the channel into which a fluid containing samples is introduced is observed with an optical microscope." Accordingly, it is respectfully submitted that the Examiner's rejection under 35 U.S.C. § 112 is not applicable to amended claim 6.

On pages 2-4 of the Office Action, the Examiner rejected claims 4 and 5 under 35 U.S.C. § 102(b) as being anticipated by Zold (US 4,175,662). On pages 5-6 of the Office Action, the Examiner rejected claims 6-13 under 35 U.S.C. § 103(a) as being unpatentable over Zold in view of Basiji (US 6,211,955). For the reasons discussed below, it is respectfully submitted that the

amended claims are clearly patentable over the prior art of record.\

Amended independent claim 4 recites a cell analysis and sorting apparatus comprising a first channel into which a fluid containing samples is introduced at a sample fluid introduction portion of the first channel, with the samples being introduced by a laminar flow into a sample-separating portion from the first channel. The cell analysis and sorting apparatus of claim 4 further comprises second and third channels arranged symmetrically on both sides of the first channel, with a pair of streams of fluid which are made to meet in the sample-separating portion and which contain no samples being introduced into the second and third channels. Further, claim 4 recites means for selecting samples at the sample-separating portion, a sample recovery channel disposed downstream of the first channel into which the samples are introduced such that the fluid containing a sample selected from the sample-selecting portion flows out in a laminar flow, and a pair of fluid passages which are arranged symmetrically on both sides of the sample recovery channel and into which unwanted samples are discharged.

In addition, claim 4 recites that *the first channel and the sample recovery channel are arranged to control a flow velocity of the fluid according to a difference between a height of a liquid surface of the fluid in the sample fluid introduction portion of the first channel and a height of a liquid surface in the sample recovery channel downstream of the sample-separating portion.*

Zold discloses a device for sorting particles suspended in an electrolyte which, as shown in Fig. 3, includes an orifice 28, side entrance channels 36 and 37, a middle channel 50, side exit channels 52 and 54, and a middle exit channel 58. However, Zold does not disclose *a first channel and a sample recovery channel are arranged to control a flow velocity of the fluid according to a difference between a height of a liquid surface of the fluid in the sample fluid introduction portion of the first channel and a height of a liquid surface in the sample recovery channel downstream of the sample-separating portion*, as required by independent claim 4.

In particular, Zold discloses that the flow velocity of the suspension and pure electrolyte is controlled by a suction pump, and does not disclose or suggest that a first channel and a sample recovery channel are arranged to control a flow velocity of the fluid according to a difference between a height of a liquid surface of the fluid into the sample fluid introduction portion of the

first channel and a height of a liquid surface in the sample recovery channel downstream of the sample-separating portion, as required by independent claim 4.

In this regard, on page 3 of the Office Action, the Examiner notes that the apparatus of Zold "is capable of controlling flow velocity according to the difference between the height of the liquid surface of the fluid introduced into said channel (Fig. 1 fluid introduction containers 38 and 40) and the height of the liquid surface in the channel downstream of the sample-separating portion (Fig. 1 downstream containers 22 and 24)." It is first noted that Zold is completely silent as to any details regarding the relative heights of the fluid in the various passages and containers of the device of Zold. Thus, the Examiner's conclusion that Zold is capable of controlling flow velocity according to the difference between the height of the liquid surface of the fluid in containers 38 and 40 and the height of the liquid surface in the containers 22 and 24 appears to be based solely on the disclosure of Fig. 1 of Zold.

In this regard, it is noted that the height of the fluid in the containers 38 and 40 in Fig. 1 does not correspond to a height of a liquid surface of the fluid in the sample fluid introduction portion of the first channel, as required by claim 4. Similarly, it is noted that the height of the liquid in the containers 22 and 24 does not correspond to a height of a liquid surface in the sample recovery channel downstream of the sample-separating portion, as required by claim 4. Therefore, any disclosure of Fig. 1 regarding the ability of the device of Zold to control the flow velocity based on the difference between the height of the fluid in the containers 38 and 40 and the height of the fluid in the containers 22 and 24 does not disclose or suggest a first channel and a sample recovery channel arranged to control a flow velocity of the fluid according to a difference between a height of a liquid surface of the fluid in the sample fluid introduction portion of the first channel and a height of a liquid surface in the sample recovery channel downstream of the sample-separating portion, as required by independent claim 4.

Accordingly, it is respectfully submitted that Zold does not anticipate independent claim 4.

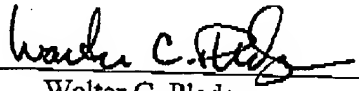
Therefore, it is respectfully submitted that independent claim 4, as well as claims 5-16 which depend therefrom, are clearly allowable over the prior art of record.

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is clearly in condition for allowance. An early notice to that effect is respectfully solicited.

If, after reviewing this Amendment, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

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